IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 121 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

SUNIL J KINARIWALA

Appearance:

1. INCOME TAX REFERENCE No. 121 of 1991

MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 18/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, various questions are referred for the opinion of this Court in respect of assessment years 1982-83 to 1984-85.

2. We have heard Mr. B.B. Naik, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. The following question is referred which is common for all the three assessment years:-

"Whether, the Appellate Tribunal is right in law and facts in directing the Income Tax Officer to assess only 65% of 14% share from the firm of M/s. R.J. Kinariwala and company as taxable in the hands of the assessee ?"

Mr. Naik fairly points out that the controversy raised herein is now concluded in favour of the assessee by the decision of this Court in CIT vs. Sunil J. Kinariwala 211 ITR 127. We accordingly answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

4. The following common question is referred for assessment years 1982-83 and 1983-84:-

"Whether, the Appellate Tribunal is right in law and on facts in deleting the income of the two beneficiaries from the income of the assessee included under section 64 (1)(i) and 64 (1)(ii) of the Income Tax Act ?"

Here also, Mr. Naik fairly points out that the controversy has been concluded in favour of the assessee by the aforesaid decision of this Court in CIT vs. Sunil J. Kinariwala (supra). We accordingly answer this question also in the affirmative i.e. in favour of the assessee and against the revenue.

5. The following question is referred for assessment year 1982-83 only :-

"Alternatively whether the Appellate Tribunal ought not to have held on the facts and in the circumstances of the case that in respect of two beneficiaries the provisions of section 64 (1)(iv) and 64 (1)(v) of the Act were applicable?"

Here also, Mr. Naik concedes that such a

question has been answered by the Court in favour of the assessee in the aforesaid decision in CIT vs. Sunil J. Kinariwala (supra). We accordingly answer this question in the negative i.e. in favour of the assessee and against the revenue.

6. Coming to the last question of this reference, it is for the assessment years 1983-84 and 1984-85. The question reads as under:-

"Whether, the Appellate Tribunal is right in law and on facts in directing the Income Tax Officer to allow interest u/s.214 on excess payment of tax as determined in the revised assessment?"

As far as this question is concerned, Mr. Naik submits that the controversy raised herein is concluded in favour of the revenue by the decision of the Apex Court in Modi Industries Ltd. vs. CIT 216 ITR 759. Having gone through the aforesaid decision and the principles laid down therein, we find that there is considerable substance in the contention of Mr. Naik that the Apex Court has not approved the principles laid down by this Court in Bardolia Textile Mills Ltd. 151 ITR 389 on which the Tribunal had relied.

We accordingly answer this question in the negative i.e. in favour of the revenue and against the assessee.

7. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

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